

FILED
APR 10 2006

DEPARTMENT OF MANAGED HEALTH CARE
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BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE
OF THE STATE OF CALIFORNIA

In the Matter of:

FIRST CHOICE HEALTH CARE, INC.

Respondent.

OAH No.:

Enforcement Matter No.: 06-124

**CEASE AND DESIST ORDER AND
NOTICE OF RIGHT TO HEARING**

(Health and Safety Code sections 1349, 1360,
1386, 1391, and 1395; California Code of
Regulations, title 28, section
1300.67.4(a)(3)(A))

TO: FIRST CHOICE HEALTH CARE, INC.
1055 F Street
San Diego, CA 92101

The Director of the Department of Managed Health Care, by and through her designee,
Assistant Deputy Director, Amy L. Dobberteen, after investigation, determines as follows:

I.

INTRODUCTORY STATEMENT

1. California Health and Safety Code section 1349 requires any person arranging for
health care services in California to first obtain a license from the Department of Managed
Health Care. Respondent is a health care service plan, as defined in Health and Safety Code

1 section 1345(f)(1), and is required to obtain a license. In violation of California law, Respondent
2 is operating in the State of California without a license and is soliciting California residents to
3 buy health care service plans with misleading and misrepresenting advertising.

4 2. **THEREFORE**, the Department of Managed Health Care hereby directs
5 Respondent to obtain a Knox-Keene Act license, and to cease and desist from any further illegal
6 activity in the State of California, as set forth below.

7 **II.**

8 **STATUTORY AUTHORITY**

9 3. Health and Safety Code section 1399.5, provides in part:

10 It is the intent of the Legislature that the provisions of this
11 chapter shall be applicable to any private or public entity or
12 political subdivision, which, in return for a prepaid or periodic
13 charge paid by or on behalf of a subscriber or enrollee,
14 provides, administers or otherwise arranges for the provision
15 of health care services....

16 4. Health and Safety Code section 1345(f)(1) provides:

17 (f) Health care service plan or specialized healthcare service
18 plan means either of the following:

19 (1) Any person who undertakes to arrange for the provision of
20 health care services to subscribers or enrollees or to reimburse any
21 part of the cost for those services, in return for a prepaid or
22 periodic charge paid by or on behalf of the subscribers or enrollees.

23 5. Health and Safety Code section 1349, provides:

24 It is unlawful for any person to engage in business as a plan in
25 this state or to receive advance or periodic consideration in
26 connection with a plan from or on behalf of persons in this state
27 unless such person has first secured from the director a license,
28 then in effect, as a plan or unless such person is exempted by
the provisions of Section 1343 or a rule adopted hereunder. A
person licensed pursuant to this chapter need not be licensed
pursuant to the Insurance Code to operate a health care service
plan or specialized health care service plan unless the plan is
operated by an insurer, in which case the insurer shall also be
licensed by the Insurance Commissioner.

1 6. Health and Safety Code section 1391(a)(1), provides:

2 The director may issue an order directing a plan, solicitor firm,
3 or any representative thereof, a solicitor, or any other person
4 to cease and desist from engaging in any act or practice in
5 violation of the provisions of this chapter, any rule adopted
6 pursuant to this chapter, or any order issued by the director
7 pursuant to this chapter.

8 7. Health and Safety Code section 1360, provides in part:

9 (a) No plan, solicitor, solicitor firm, or representative shall
10 use or permit the use of any advertising or solicitation which is
11 untrue or misleading, or any form of evidence of coverage
12 which is deceptive. For purposes of this article:

13 1. A written or printed statement or item of information
14 shall be deemed untrue if it does not conform to fact in
15 any respect, which is, or may be significant to an
16 enrollee or subscriber, or potential enrollee or
17 subscriber in a plan.

18 2. A written or printed statement or item of information
19 shall be deemed misleading whether or not it may be
20 literally true, if, in the total context in which the
21 statement is made or such item of information is
22 communicated, such statement or item of information
23 may be understood by a person not possessing special
24 knowledge regarding health care coverage, as
25 indicating any benefit or advantage, or the absence of
26 any exclusion, limitation, or disadvantage of possible
27 significance to any enrollee, or potential enrollee or
28 subscriber, in a plan, and such is not the case.

29 8. California Code of Regulations, title 28, section 1300.67.4(a)(3)(A) provides:

30 [a] benefit afforded by the contract shall not be subject to any
31 limitation, exclusion, exception, reduction, deductible, or co-
32 payment, which renders the benefit illusory.

33 9. Health and Safety Code section 1386 (b)(7) provides:

34 (b) The following acts or omissions constitute grounds for
35 disciplinary action by the Director.

36 (7) The Plan has engaged in conduct that constitutes fraud or
37 dishonest dealing or unfair competition, as defined by Section
38 17200 of the Business and Professions Code.

10. Health and Safety Code section 1395(a) provides in part:

Any price advertisement shall be exact, without the use of such phrases as "as low as," "and up," "lowest prices" or words or phrases of similar import. ... Price advertising shall not be fraudulent, deceitful, or misleading, nor contain any offers of discounts, premiums, gifts, or bait of similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable.

III.

VIOLATIONS OF LAW

a) Unlicensed Acts

11. Respondent is undertaking to arrange for the provision of health care services to subscribers in return for a periodic charge paid by the subscriber within the meaning of Health and Safety Code section 1345(f)(1), without a Knox-Keene Act license, in violation of Health and Safety Code section 1349.

12. Specifically, Respondent's website states:

- a. "All medical procedures are channeled through our PATIENT ADVOCACY professionals..."
- b. "When you become a member, you will receive a member handbook and a set of ID Cards. You will then call our Customer Service Department at 1800-931-6577 to activate your membership. At this time, our representatives will assist you with any of your health care needs, such as finding a doctor, hospital, lab, diagnostic center, pharmacy, etc.";
- c. "If a member needs to go to a doctor anywhere in the nation, call our Provider Network so they may contact a provider on your behalf, confirm their participation in the network..." and
- d. "Call member services and they will assist you in setting up routine physicals, x-rays, CAT scans, MRI's, mammograms, PAP smears, PSA's, dialysis, and lab tests at rates reduced up to 50%."

b) Misleading Product or Services

13. Respondent's advertising and solicitation practices are misleading by using language that is generally associated with insurance coverage and terminology that is likely to mislead consumers. These practices are in violation of Health and Safety Code sections 1360(a)(1) and (2), California Code of Regulations, title 28, section 1300.67.4(a)(3)(A), and

Respondent's practices described herein constitute fraud, or dishonest dealing, or unfair competition, as defined by Section 17200 of the Business and Professions Code, in violation of Health and Safety Code section 1386(b)(7).

14. Specifically, Respondent's website uses insurance terminology by advertising as follows:

- a. "The association offers a combination of a Discount Medical Plan and traditional insured benefits."
- b. "We will assist and support the member with all necessary paperwork in order to file a claim with the payer of this type of claim, American Family Life Insurance Company."
- c. "Fully insured supplemental benefits"
- d. "There is no deductible for hospitalization or surgery."
- e. "There are no limitations or restrictions and no preauthorization required for procedures."
- f. "\$15.00 Co-pay for Generic Drugs"
- g. "\$10,000.00 Accident Medical/Dental Benefits"
- h. "\$20,000.00 Accidental Death and Dismemberment "Benefit"

c) Misleading Price Advertising

15. By including the insurance products listed above with enrollment in Respondent's health care benefits, Respondent is using a bait and/or gift which violates of Health and Safety Code section 1395.

16. Respondent is also in violation of Health and Safety Code section 1395 by engaging in prohibited inexact price advertising using terms such as "up to," which is fraudulent, deceitful, or misleading advertising.

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1 IV.

2 CEASE AND DESIST ORDER

3 Based on the foregoing, the Director finds that Respondent has violated Health
4 and Safety Code sections 1349; 1360(a)(1), (a)(2) and 1386(b)(7); 1395 and California Code of
5 Regulations, title 28, section 1300.67.4(a)(3)(A).

6 THEREFORE, pursuant to Health and Safety Code section 1391 of the Knox-
7 Keene Act:

8 IT IS HEREBY ORDERED:

9 1. That Respondent, and any of its directors, officers, trustees, managers, affiliates,
10 agents, and all persons participating with them or acting in concert with them, shall immediately

11 CEASE AND DESIST FROM:

- 12 a. Operating in California without a Knox-Keene Act license;
13 b. Promoting any further deceptive or misleading advertisements or
14 solicitations to California residents;
15 c. Conducting any enrollment activities in California for health care
16 memberships, including, but not limited to, medical, dental, vision,
17 hospitalization, and pharmacy benefits.
18 d. Taking, receiving, or forwarding any application for health care
19 memberships from California residents; and
20 e. Collecting or receiving, in full or in part, any payments for health-care
21 memberships from or on behalf of California residents.

22 2. Respondent shall disclose conspicuously in any advertisement, Internet web page,
23 or solicitation that may reasonably be viewed by residents of the State of California

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1 that their health care membership product is not available in the State of California.

2 3. Respondent shall refund all monies to demanding members without undue delay.

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4 Dated: April 10, 2006

LUCINDA EHNES, Director
Department of Managed Health Care

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7 By:


AMY L. DOBBERTEN
Assistant Deputy Director
Department of Managed Health Care